IN THE MATTER OF A REQUEST)
FOR A DECLARATORY RULING)
BY MACDERMID, INCORPORATED)
)
) OCTOBER 8, 1998

DECLARATORY RULING

Pursuant to Conn. Gen. Stat. § 4-176(e) and Conn. Agencies Regs. § 22a-3a-4, the Commissioner issues this ruling in response to a Petition for a Declaratory Ruling ("Petition") submitted by MacDermid, Incorporated ("MacDermid"). MacDermid's Petition concerns certain materials transported to, stored at and used at its 526 Huntington Avenue, Waterbury, Connecticut facility ("facility").

A. FACTS

MacDermid sells a chemical under the trade name "Ultra Etch" to the printed circuit board industry. The primary active ingredients of Ultra Etch are ammonium chloride and ammonium hydroxide. Ultra Etch is used by circuit board manufacturers to dissolve copper from printed circuit boards. In the course of being used Ultra Etch becomes contaminated with copper salts which eventually render the Ultra Etch unusable. Petition, p 4.

Each circuit board manufacturer who buys Ultra Etch from MacDermid is contractually required to return the spent Ultra Etch ("spent etchant") to MacDermid. After storing the spent etchant in either a drum or a tank, MacDermid puts or pumps the spent etchant into a tank known as the "reactor tank." Caustic soda is added to the reactor tank and heat is applied causing a chemical reaction in which copper oxide precipitates out and anhydrous ammonia gas is generated. The ammonia gas is transferred from the reactor tank to another tank, known as a "scrub tank," where the ammonia gas reacts with hydrochloric acid and changes back into a liquid to form ammonium chloride. The copper oxide in the reactor tank is allowed to settle, is

washed, and is discharged to a filter press for final processing. The ammonium chloride and copper oxide produced from spent etchant are sold to others as well as used by MacDermid in manufacturing other products. Petition, p. 4-7 and July 7, 1998 submission, Exhibit 22.1

Before processing in the manner described above, the spent etchant is corrosive and by virtue of its corrosivity has, to date, been considered and managed by both the circuit board manufacturers and MacDermid as a hazardous waste pursuant to Conn. Agencies Regs. § 22a-449a(c)-101(a)(1), which incorporates by reference 40 CFR § 261.22.2 Petition, p. 4-5.

B. PROCEDURAL BACKGROUND

On August 9, 1994, the Commissioner issued two permits to MacDermid. One permit, issued under Conn. Gen. Stat. § 22a-449(c) ("the hazardous waste permit"), concerns hazardous waste management activities at MacDermid's facility and authorizes MacDermid to, among other things, store spent etchant prior to recycling. The other, issued pursuant to Conn. Gen. Stat. § 22a-454 ("the 22a-454 permit"), regulates the process by which MacDermid recycles spent etchant. At no time during the permitting proceedings did MacDermid assert that the spent etchant is not a waste or is exempt from regulation. In fact, the spent etchant has been regulated as a hazardous waste under the state's RCRA regulations for over ten years.

By letter dated January 10, 1997, MacDermid requested that the Department review the regulatory status of spent etchant and find that it is exempt from regulation under 40 CFR § 261.2(e)(1). In a response dated February 6, 1997, the Department concluded that MacDermid's processing of spent etchant constitutes reclamation and, accordingly, the transportation of spent etchant to MacDermid's facility by its customers and the handling and management of spent etchant at its facility are hazardous waste management activities subject, as they always have been, to the state's RCRA regulations.

MacDermid then filed this Petition for a Declaratory Ruling taking issue with the conclusions reached in Department's February 6, 1997 letter. Pursuant to Conn. Agencies Regs. § 22a-3a-4(a)(3), in October 1997, notice of MacDermid's Petition was published in newspapers throughout the state and provided to the U.S. Environmental Protection Agency's Region I office and the Town of Waterbury.3 Pursuant to Conn. Agencies Regs. §§ 22a-3a-4(a)(4),

22a-3a-4(c)(3) and Conn. Gen. Stat. § 4-176, in December 1997, the Commissioner issued a Notice of Intent to Issue a Declaratory Ruling.4 The Department has not received any public comments concerning the Petition.5

C. THE ISSUES RAISED IN MACDERMID'S PETITION

MacDermid seeks four separate rulings related to spent etchant. Specifically, MacDermid requests that the Department rule that:

1. the spent etchant used to produce copper oxide and ammonium chloride is not a solid waste under 40 CFR § 261.2(e)(1)(i);

2. assuming that the spent etchant is not a solid waste under 40 CFR § 261.2(e)(1)(i), it is not necessary to manage the spent etchant as a hazardous waste under Connecticut's RCRA regulations while it is being transported to, stored at and used at MacDermid's facility;

3. assuming that the spent etchant is not a solid waste under 40 CFR § 261.2(e)(1)(i), the spent etchant is exempt from regulation under Conn. Gen. Stat. § 22a-454 while it is being transported to, stored at and used at MacDermid's facility; and

4. assuming that the spent etchant is not a solid waste under 40 CFR § 261.2(e)(1)(i) and is exempt from regulation under Conn. Gen. Stat. § 22a-454, those customers of MacDermid who generate spent etchant are not required to manage it as a hazardous waste under Connecticut's RCRA regulations or under Conn. Gen. Stat. § 22a-454 while it is being stored pending transport to MacDermid's facility.

D. DISCUSSION

1. The "Spent Etchant" Used by MacDermid at its Facility is a Solid Waste and Therefore Subject to Regulation Under Connecticut's RCRA regulations.

The dispositive issue raised by this Petition is whether spent etchant is a "solid waste" as that term is defined in Connecticut's RCRA regulations, specifically 40 CFR § 261.2.6 This determination turns on whether MacDermid's use of spent etchant constitutes reclamation or the manufacturing of a product. For the reasons set forth below, I conclude that MacDermid's use of spent etchant constitutes reclamation and therefore the spent etchant is a solid waste. Accordingly, the storage of spent etchant while awaiting transport to MacDermid's facility and the transportation to, storage at and use of spent etchant at MacDermid's facility constitute hazardous waste management activities subject to Connecticut's RCRA regulations and Conn.

Gen. Stat. § 22a-454.

MacDermid argues that its spent etchant is not subject to regulation as a hazardous waste because it is not a solid waste. Under Connecticut's RCRA regulations, a "hazardous waste" is a type of solid waste; thus if a material is not a solid waste, it is not subject to regulation under Connecticut's RCRA program.7

A solid waste is defined as any "discarded material." 40 CFR § 261.2 (a)(1). A "discarded material" is defined as any material which is "abandoned", "recycled" or "inherently waste-like." 40 CFR § 261.2(a)(2).8 Since spent etchant is neither abandoned nor inherently waste-like, the question is whether MacDermid's management of spent etchant constitutes recycling.9

Whether a material being recycled is a "solid waste" depends upon the type of material at issue and the manner in which it is recycled. See American Mining Congress v. EPA, 824 F.2d 1177, 1180 (D.C. Cir. 1987)(whether a material is a RCRA solid waste when it is recycled requires an examination of both the material or substance itself and the recycling activity involved) and 40 CFR § 261.2(c). 40 CFR § 261.2(c) specifies five different types of materials, each of which may be a solid waste if recycled by one of the four different recycling methods specified in the regulations. The issue here is whether spent etchant is a "spent material" being recycled by "reclamation."

A "spent material" is defined as "any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing." 40 CFR § 261.1(c)(1). Here MacDermid provides Ultra Etch to circuit board manufacturers who use the etchant to remove copper from circuit boards. As a result of this use, Ultra Etch becomes contaminated with copper salts, it becomes spent, and can no longer serve the purpose for which it was produced -- removal of copper from printed circuit boards -- without further processing. Accordingly, the spent etchant is a "spent material" under 40 CFR § 261.1(c)(1), which if reclaimed would be a solid waste under the state's RCRA regulations.

A material is reclaimed

> [i]f it is processed to recover a usable product, or if it is regenerated. Examples are

recovery of lead values from spent batteries and regeneration of spent solvents.

40 CFR § 261.1(c)(4). Under this definition reclamation includes two related but distinct concepts, the processing of a material to recover a useable product and the regeneration of a material. While both involve "recovering usable material from otherwise unusable material," see 48 Fed. Reg. 14472, 14487 (April 4, 1983), regeneration involves the removal of contaminants or impurities from a material so that a usable product remains, (see 50 Fed. Reg. 614, 633 (January 4, 1985)), while material recovery does not involve removal of contaminants, but rather the extraction or recovery of a usable product from a material, such as lead from batteries or precious metals from photo developer wastes.

In applying this definition, I conclude that MacDermid is engaged in reclamation by material recovery from the spent etchant. Before use, MacDermid's Ultra Etch product does not contain copper. Petition, p. 4. Ultra Etch removes copper from printed circuit boards by dissolving and holding copper in solution. Id. and July 7, 1998 submission, Exhibit 22, Tab 4. Through use Ultra Etch eventually becomes so contaminated with copper that it is rendered unusable (i.e., spent). Through its recycling process, MacDermid extracts dissolved copper from spent etchant in the form of copper oxide which it in turn uses to produce other copper-based products. Based upon these facts, I conclude that MacDermid is recovering the copper values in spent etchant; it processes spent etchant so that it can recover usable copper. [*Sentence removed based upon an confidential business claim asserted by MacDermid].*

MacDermid also extracts another usable product, ammonia, from spent etchant. Ammonia is used to produce ammonium chloride, one of the primary active ingredients in Ultra Etch. After use Ultra Etch can no longer dissolve the copper on printed circuit boards. Through its recycling process, MacDermid removes copper and recovers the ammonia gas present in spent etchant. While this ammonia gas is recovered during an intermediate step in the recycling process, it is just like the new ammonia gas that MacDermid adds to the scrub tank. See July 7, 1998 submission, P. 13, fn. 19. The fact that MacDermid uses the ammonia gas from the reactor

tank just like the new ammonia gas it purchases reinforces the conclusion that MacDermid is recovering the ammonia values in spent etchant and is therefore engaged in reclamation.10 In fact, MacDermid could take the ammonia gas generated in the reactor tank out of the recycling process and save it for later use.

2. MacDermid's Processing of Spent Etchant Does Not Fit Within the Regulatory Exception it Relies Upon in the Petition.

MacDermid characterizes the situation differently and claims that its processing of spent etchant fits within a regulatory exception that states that materials are not solid wastes when they are recycled by being:

> *used or reused* as ingredients in an industrial process to make a product, provided the materials are not being reclaimed.

40 CFR § 261.2 (e)(1)(i)(italics added).11 There are a number of problems with MacDermid's claim. First, as was discussed above, MacDermid's spent etchant *is* being reclaimed as that term is defined in the regulations. Moreover, MacDermid's processing does not constitute "use or reuse" as those terms are defined in 40 CFR § 261.2(e)(1)(i).

> A material is "used or reused" if it is
>
> (i) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or
>
> (ii) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

40 CFR § 261.1(c)(5). Based upon these rules, MacDermid argues that it is not reclaiming spent etchant, but rather is using or reusing spent etchant as an ingredient in the manufacturing of copper oxide and ammonium chloride. Petition, p. 2, 3 and 25. In support of its view MacDermid argues that since copper oxide and ammonium chloride, the two products recovered from its recycling process, are not present in the spent etchant before recycling, MacDermid

cannot be and is not,"recovering" or "reclaiming" these materials. In MacDermid's view, it is manufacturing a new product with spent etchant serving as the raw material for that manufacturing process.

MacDermid's argument cannot withstand analysis. First, it is inconsistent with the facts set forth in the Petition which indicates that ammonium chloride ions, and hence ammonium chloride, *are* present in spent etchant. Petition p. 15 and June 2, 1998 submission. Accordingly, MacDermid's argument that it is not engaged in reclamation because ammonium chloride is *not* present in spent etchant must fail.

Second, MacDermid's argument is not supported by the definition of "used or reused". Under this definition, a material is used or reused if it is employed as an ingredient in an industrial process to make a product, *provided distinct components of the material are not being recovered as separate end products.* (Italics added). Put differently, if distinct components of a material *are* being recovered as separate end products, the material is being reclaimed, not used or reused. Nothing in this definition states or requires, as MacDermid argues, that reclamation is limited to only those situations where distinct components of a material being recovered are chemically or otherwise the same as the end product being produced.

Indeed, when construing the use/reuse and reclamation provisions the Department has considered a spent material to be a solid waste, even when the end-product of the recycling of such waste differed from the spent material. For example, precious metal recyclers often recover precious metals from spent materials or other wastes, such as the recovery of silver from a silver nitrate solution. The chemical form of the spent material at the outset of the process --silver nitrate -- differs from the chemical form of silver which is recovered as a separate end product, namely metallic silver. Despite this change in the chemical form of the silver, the Department has considered the extraction of silver from silver nitrate to be reclamation, and accordingly the silver nitrate is a solid waste subject to the state's RCRA regulations.12

This approach is consistent with EPA's comment that when promulgating the definition of reclamation it relied heavily on the definitions of "resource recovery" and "recovered material" in

the Resource Conservation and Recovery Act ("RCRA"). 50 Fed. Reg. 614, 633 (January 4, 1985). The term "resource recovery" in RCRA is very broad and is defined as "the recovery of material or energy from solid waste". 42 U.S.C. § 6903 (22). Pertinent legislative history states that:

> [r]esource recovery refers to the extraction of any resource, including energy, from the solid waste stream. Resource recovery is a very broad concept which could include recovery of heat (energy) from an incinerator or extraction of iron and steel scrap from waste.

H.R. Rep. No. 94-1461, Part II, at 90 (1976), reprinted in Vol 5. 1976 U.S.C.C.A.N. 6238, 6326. The term "recovered material" in RCRA is similarly expansive, including "waste material and byproducts which have been recovered or diverted from solid waste" except for "those materials and by-products generated from, and commonly reused within an original manufacturing process". 42 U.S.C. § 6903(19). In commenting upon these definitions when proposing the definition of reclamation, EPA stated that,

> [t]he Agency is following closely the various statutory definitions that indicate unequivocally that recovering usable material from otherwise unusable material constitutes solid waste management, and that the materials from which resources are recovered are solid wastes.

48 Fed. Reg. 14472, 14487 (April 4, 1983). Given the breadth of these definitions and EPA's statements as to the meaning of reclamation, the term reclamation should likewise be construed broadly and not given the narrow reading proffered by MacDermid.

In considering whether reclamation or use/reuse is occurring the process as a whole must be considered, including but not limited to, the composition of the material which ultimately becomes a waste, the composition of the waste material, the method of recycling, what is occurring in the recycling process, and whether products produced from recycling use or incorporate waste materials and, if so, how. In short, regardless of the chemical changes that may take place or the varying chemical forms in which a material may appear, the definition of "used or reused" requires an examination of whether material values are being extracted or recovered from the material in question. If such extraction or recovery is taking place, and

products are being produced from the material values being extracted, the materials do not meet the definition of used or reused. Since MacDermid is extracting copper and ammonia values from spent etchant to recover copper and ammonia based products, it is not using or reusing spent etchant; rather, it is reclaiming spent etchant.

This conclusion is further supported when the introduction of caustic soda into the reactor tank is examined. Caustic soda's primary purpose in being added to the reactor tank is to facilitate the chemical reaction through which the copper and ammonia values in spent etchant are recovered and not to serve as an ingredient in the manufacturing of either copper oxide or ammonium chloride. This further supports the conclusion that MacDermid is engaged in recovery of material values in spent etchant and not the manufacturing of a product.

In support of its position MacDermid cites to and has provided copies of letters from other state agencies and this Department, and an excerpt from an EPA guidance document entitled Guidance Manual on the RCRA Regulation of Recycled Material (EPA-530/SW-86015). These sources are of little help to MacDermid since most of them fail to provide enough information about the processes under consideration to assess their comparability to the instant matter. For example, there is virtually no information about how the materials in question became contaminated and whether the recycling process involves the extraction of usable component of a waste. Furthermore, virtually all of the determinations from other states are conclusory letters in which, without explanation or analysis, a state agency states that a material either is or is not exempt from regulation.13 For these reasons, these letters from other states lend little support to MacDermid's position.

Even the EPA guidance document excerpt (see the Petition, Exhibit 9) provides no real analysis for its conclusion. Moreover, it is not at all clear that factually the situation described in the guidance document is comparable to the present situation. In fact, another excerpt from the same guidance document in which EPA concludes that reclamation is occurring seems closer to the facts presented in this Petition. July 7, 1998 submission, Exhibit 31, from the excerpt entitled "Reclamation - Spent Material 11". In any event, EPA guidance does not bind the Department

and I do not find the excerpt relied upon by MacDermid to be persuasive given the facts in this case.

For the foregoing reasons, I conclude that the recycling process employed by MacDermid constitutes reclamation and that the spent etchant received at MacDermid's facility is a solid waste under 40 CFR §261.2. Since the spent etchant is a corrosive hazardous waste under 40 CFR § 261.22, it must be managed as a hazardous waste when generated and stored by MacDermid's customers and while it is being transported to, stored at and used by MacDermid at its facility.

3. Even if MacDermid's Use of Spent Etchant Constituted "Use or Reuse" Within the Meaning of 40 CFR § 261.2(e)(1)(i), the Exemption Sought by MacDermid Could Not Be Granted Because Products Produced From MacDermid's Recycling Process May Be Applied to the Land.

Even if MacDermid's recycling process constituted use/reuse of spent etchant, the spent etchant would remain subject to regulation under the State's RCRA regulations.

40 CFR § 261.2 (e)(1)(i) provides that materials are not solid wastes when they are used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed. MacDermid relies upon this provision in asserting that spent etchant is not a solid waste. However, 40 CFR § 261.2(e) goes on to state that

> [t]he following materials *are* solid wastes, *even if the recycling involves use, reuse*, or return to the original process described in paragraphs (e)(1)(i) through (iii) of this section:
>
> (i) materials used in a manner constituting disposal, or used to produce products that are applied to the land; or
> (ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels; or
> (iii) materials accumulated speculatively; or
> (iv) materials listed in paragraphs (d)(1) or (d)(2) of this section.

40 CFR § 261.2(e)(2)(italics added). Under this provision, even if the recycling of spent etchant constituted use/reuse as claimed by MacDermid, as opposed to reclamation, it would remain a

solid waste if the spent etchant was used in any of the ways specified in 40 CFR § 261.2(e)(2) or was listed in 40 CFR § 261.2(d)(1) or (d)(2). At issue here is that portion of 40 CFR § 261.2(e)(2) which states that materials are solid wastes if they are used in a manner constituting disposal or if used to produce products applied to the land.14

In the Petition, MacDermid noted that during fiscal year 1997 large quantities of the copper oxide generated by its recycling process were sold for use as an ingredient to manufacture products, including fungicides. Petition, p.7. Fungicides are used to destroy fungi and in the Department's experience are often sprayed or dusted onto the land. Therefore, through October 1997, the spent etchant remained a solid waste under 40 CFR § 261.2(e)(2)(i) because, among other reasons, it was used to produce a product applied to the land.

In a July 1998 response to the Department's requests for additional information about how copper oxide and ammonium chloride are used, MacDermid provided an affidavit from Gregory Strong (the Strong affidavit), the manager of regulatory affairs at MacDermid's facility. July 7, 1998 submission, Exhibit 22. In his affidavit, Mr. Strong states that he is "aware of the identity of the products produced from the copper oxide and the ammonium chloride" and that both are sold to other manufacturers and used by MacDermid to manufacture other products. Strong Affidavit ¶'s 6, 9 and 31. While Mr. Strong goes on to discuss the products manufactured from copper oxide and ammonium chloride by MacDermid, he does not state what products are manufactured from the copper oxide and ammonium chloride that MacDermid sells to others.15

Moreover, even with respect to products MacDermid produces from copper oxide, at best, all the Strong affidavit indicates is that the products produced by MacDermid from copper oxide and ammonium chloride are not *intended* to be used in a product applied to the land. See the Strong Affidavit ¶ 7, 14 and 20. However, 40 CFR § 261.2(e)(2) does not address the use for which a product is intended; rather the question is how a product is actually used. In short, for

both the copper oxide and ammonium chloride sold by MacDermid to others and to the products MacDermid manufactures from these materials, MacDermid has not shown that it is entitled to the exemption afforded by 40 CFR 261.2(e)(1)(i), because the copper oxide and ammonium chloride from the recycling of spent etchant may be used to produce products applied to the land. MacDermid claims, however, that 40 CFR § 261.2(e)(2)(i) does not apply to the copper oxide produced from its recycling process because the copper oxide is sold and the act of selling is not a use constituting disposal. June 13, 1998 submission, p 3. However, 40 CFR § 261.2(e)(2)(i) focuses on how a material being recycled is actually used, in particular, whether the recycled material is used in a manner constituting disposal or used to produce products applied to the land. In this case, the question under 40 CFR § 261.2(e)(2)(i) is whether copper oxide or ammonium chloride is used in manner constituting disposal or used to produce products applied to the land. If so, spent etchant -- the substance from which these materials were derived -- would be a solid waste. To assert as MacDermid does, that the mere selling of a recycled product renders that material outside the purview of 40 CFR § 261.2(e)(2)(i) without any regard to how such material is actually used would be contrary to both the express language and the purpose of the regulation. Accordingly, I reject MacDermid's claim that the sale of copper oxide renders 40 CFR § 261.2(e)(2)(i) inapplicable to this case.

MacDermid next relies upon the preambles to the proposed and final rules promulgated by EPA regarding the definition of solid waste to argue that 40 CFR § 261.2(e)(2)(i) does not apply to copper oxide because the copper oxide itself allegedly is not a hazardous waste and therefore products produced from it are not "waste derived products." June 13, 1998 submission.

MacDermid's argument, however, appears aimed at establishing that *copper oxide* itself is not subject to regulation.16 However, the regulatory status of copper oxide is not at issue here. What is at issue is the regulatory status of spent etchant and under 40 CFR § 261.2(e)(2) how copper oxide is used may in turn affect the regulatory status of spent etchant. Put differently, under 40 CFR § 261.2(e)(2)(i) the question is whether the spent etchant is used in a manner constituting disposal or used to produce products that are applied to the land, not whether copper

oxide is a "waste derived product." In fact, the term "waste-derived product" does not even appear in 40 CFR § 261.2(e)(2)(i) and there is nothing in all of the preamble language cited by MacDermid to support the view that under 40 CFR § 261.2(e)(2)(i) spent etchant is subject to regulation only if copper oxide is a waste derived product.

For the reasons noted above, MacDermid has not demonstrated that spent etchant is not used to produce products that are applied to the land and therefore, even if MacDermid's process constituted use/reuse of spent etchant, the rulings it has sought could not be issued.

4. The Spent Etchant at issue in this Petition is Subject to Regulation Under Conn. Gen. Stat. § 22a-454.

MacDermid argues that since the spent etchant is not a solid waste under the state's RCRA regulations, it is not subject to regulation under Conn. Gen. Stat. § 22a-454. This is not correct. Conn. Gen. Stat. § 22a-454(a) provides, in part, that

> [n]o person shall engage in the business of collecting, storing or treating waste oil or petroleum or chemical liquids or hazardous wastes...without a permit from the Commissioner.

Nothing in this statute states that if a material is not regulated under the state's RCRA regulations, that such a material is also not regulated under Conn. Gen. Stat. § 22a-454. Indeed, the statute explicitly covers, among other things, waste oil, petroleum, chemical liquids and hazardous wastes. These materials are defined expansively in Conn. Gen. Stat. § 22a-448. For example, chemical liquids includes "any chemical, chemical solution or chemical mixture in liquid form," a definition broad enough to cover spent etchant. Conn. Gen. Stat. § 22a-448(1). Accordingly, even if MacDermid had successfully argued that spent etchant was not a solid waste under the state's RCRA regulations, the spent etchant would remain subject to regulation under Conn. Gen. Stat. § 22a-454.

E. CONCLUSION

Based upon the foregoing, I rule that pursuant to Conn. Gen. Stat. § 4-176, the spent etchant which both MacDermid and its customers manage in the manner described in the Petition

is and must be managed as a hazardous waste under the state's RCRA regulations and is subject to regulation under Conn. Gen. Stat. § 22a-454.

_____ _____

Date

Jane K. Stahl
Assistant Commissioner

MEMORANDUM

To: Addressees

From: Dean Applefield DSA

Date: December 11, 1997

Re: Notice of Intent to Issue Declaratory Ruling

Please find enclosed a notice from the Commissioner of Environmental Protection regarding a petition for a Declaratory Ruling filed by Joseph A. Wellington, Esq., on behalf of MacDermid, Incorporated..

Addressees

Gregory Strong - MacDermid, Incorporated (Via Certified Mail, Return Receipt Requested)
Joseph A. Wellington, Esq. - Counsel for MacDermid
Kevin McSweeney - EPA Region I
Steven Yea - EPA Region I
The Honorable Philip A. Giordano, Mayor, Town of Waterbury
Brigadier General William A Cugno - Counsel for the Town of Waterbury
Anita Schepker - Connecticut Chemical Council
Jean M. Cronin - Connecticut Association of Metal Finishers
Thomas Turick - Connecticut Business & Industry Association
Curt Johnson - Connecticut Fund for the Environment
Merc Pittinos - Toxic Action Committee
Margery Huntington - Kosloff & Batchelor
Andrew Wizner, Esq. - Murtha, Cullina, Richter & Pinney
Kathleen M. Conway, Esq. - Adams & Harding
Martha A. Dean, Esq. - Law Offices of Martha Dean
Ross Bunnell - DEP
David Nash - DEP

STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

79 ELM STREET HARTFORD, CONNECTICUT 06106

PHONE: (860) 424-3001

Arthur J. Rocque, Jr.
Commissioner

NOTICE OF INTENT TO ISSUE A DECLARATORY RULING

In accordance with Conn. Agencies Regs. §§22a-3a-4(a)(4), 22a-3a-4(c)(3) and Section 4-176 of the Connecticut General Statutes, the Commissioner of Environmental Protection hereby gives notice that he has received a petition for a Declaratory Ruling filed by Joseph A. Wellington, Esq., on behalf of MacDermid, Incorporated. The Commissioner hereby gives notice that he has accepted the petition and will issue a declaratory ruling in this matter on or about June 8, 1998. In its petition, MacDermid asks whether a spent etchant solution generated and managed by its customers and managed at MacDermid's Waterbury facility is a waste subject to regulation under the state's hazardous waste or other waste management laws.

Interested persons may examine the petition on weekdays from 8:30 a.m. to 4:30 p.m. at the Department of Environmental Protection, 79 Elm Street, Hartford, CT., 06106. Copies of the petition or portions thereof are also available. To make arrangements to view or obtain a copy of the petition, call Dean Applefield at 424-3036.

Interested persons may, for thirty days following publication of this notice, submit comments concerning the petition or may file a request to become a party or intervenor with regard to the Commissioner's consideration of the petition. Comments concerning the petition or a request to become a party or intervenor should be directed to Dean Applefield, Office of Legal Counsel, Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106.

December 11, 1997

Arthur J. Rocque, Jr.
Commissioner of Environmental Protection

NOTICE OF FILING OF PETITION FOR DECLARATORY RULINGS BY MACDERMID, INCORPORATED WATERBURY, CONNECTICUT

MacDermid, Incorporated ("the petitioner") hereby gives notice that it has petitioned the Commissioner of the Department of Environmental Protection under section 22a-3a-4 of the Regulations of Connecticut State Agencies to determine whether the spent etchant solution MacDermid uses as an ingredient in a manufacturing process at its Huntington Avenue, Waterbury facility is a "solid waste" subject to state hazardous waste and other state regulated-waste management laws. The full name and address of the Petitioner are MacDermid, Incorporated, 245 Freight Street, Waterbury, Connecticut 06702. MacDermid's petition is divided into two parts, those being a non-privileged portion and a privileged portion. The privileged portion of the petition contains proprietary process information which MacDermid has claimed is exempt from public disclosure pursuant to Connecticut General Statutes Section 1-19(b)(5) (of the state Freedom of Information Act), Section 35-53 (of the state Uniform Trade Secrets Act) and 22a-6(a)(5).

Interested persons may obtain a copy of the non-privileged portion of the petition from Joseph A. Wellington, Esq., Carmody & Torrance, 50 Leavenworth Street, Waterbury, Connecticut 06721, telephone number (203) 575-2613. The non-privileged portion of the petition is also available for inspection at the offices of the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106 from 8:30 - 4:30 Monday through Friday.

Applicable state regulations provide that any interested person may submit comments to the Commissioner concerning the petition and/or to request party or intervenor status with regard to the Commissioner's review of the petition. Comments concerning the petition may be submitted to Dean Applefield, Esq. of the Office of the Commissioner at the DEP address set out above on or before thirty days from the date of this notice. All comments shall be in writing, signed by the commenter or his/her attorney or other representative and shall contain the name and telephone number of the commenter and his/her attorney or other representative. All comments shall be delivered in person or by mail. For further information concerning how to request party or intervenor status and where to view the unprivileged portion of the petition at the DEP offices, contact Attorney Applefield at (860) 424-3036.